

Benejam



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Servicio Internacional de Proteccion Baker,
S.A.

File: B-241670

Date: January 22, 1991

William L. Zumwalt for the protester.
Paula J. Barton, Esq., Department of State, for the agency.
Aldo A. Benejam, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest against amendment to request for proposals (RFP) for embassy guard services eliminating minimum monthly wages established in the RFP is untimely where the protest was not filed before the next closing date established in the challenged amendment.

DECISION

Servicio Internacional de Proteccion Baker, S.A. protests the terms incorporated by amendment into request for proposals (RFP) No. CR89-S-112-FA-502, issued by the Department of State for guard services at the United States Embassy, San Jose, Costa Rica.^{1/} Servicio contends that amendment 03 to the solicitation improperly eliminated minimum wage levels established in the RFP.

We dismiss the protest.

The RFP, issued on December 15, 1989, contemplated award of a firm, fixed-price contract with economic price adjustments for guard services at Embassy facilities for a 1-year period, with up to four 1-year options. Section B.3 of the RFP established minimum monthly gross wages the successful contractor would be required to pay its employees based on a 60-hour workweek for each of 10 positions. The RFP called for a combined total level of effort of 409,601 hours of standard services for the

^{1/} This RFP was the subject of a prior decision, W.M.P. Sec. Serv., Co., B-238542, June 13, 1990, 90-1 CPD ¶ 553, in which we denied a protest alleging that various provisions of the RFP arbitrarily allocated financial risk between the government and the contractor.

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base year and for each option year, compensated at a combined minimum monthly rate of 338,000 Costa Rican colones. The RFP also estimated that a total of 20,477 hours of additional or emergency services would be required during the base year and during each option year.

The agency issued amendment 03 on August 28, 1990, eliminating 5 of the 10 required positions,^{2/} reducing the total level of effort of required standard services to 273,984 hours during the base and each option year, and reducing the estimated hours of emergency services to 13,718. Amendment 03 also eliminated the minimum monthly wages from the RFP, instead requiring offerors to fill in blanks with monthly wage rates proposed for each of the remaining 5 positions; amendment 03 extended the closing date for receipt of proposals to October 4. Servicio filed its protest in our Office on October 15, arguing that amendment 03 improperly eliminated the minimum monthly wages established in the RFP.

We dismiss the protest as untimely because it challenges an alleged impropriety in the solicitation, incorporated by amendment 03, that should have been protested before the next closing date after the change was made to the RFP.

Our Bid Protest Regulations contain strict rules requiring timely submission of protests. See 4 C.F.R. part 21 (1990). These timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Air Inc.--Recon., B-238220.2, Jan. 29, 1990, 90-1 CPD ¶ 129. Under 4 C.F.R. § 21.1(a)(1), protests based upon alleged improprieties in a solicitation which are apparent from the face of the solicitation must be filed prior to the closing date for receipt of proposals. This rule includes challenges to alleged improprieties, which did not exist in the initial solicitation but, which are subsequently incorporated into the solicitation. In such cases, the solicitation must be protested not later than the next closing date for receipt of proposals following the incorporation. NASCO Aircraft Brake, Inc., B-237860, Mar. 26, 1990, 90-1 CPD ¶ 330. Here, since Servicio did not

^{2/} Amendment 01, issued on January 22, 1990, responded to questions submitted by offerors. Amendment 02, issued on July 9, adjusted the guard schedules, reduced the level of effort, increased the minimum wages, and extended the closing date to August 20.

file its protest in our Office until October 15, 11 days after the amended closing date for receipt of proposals, its protest is untimely.

The protest is dismissed.

Christine S. Melody

Christine S. Melody
Assistant General Counsel